UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,756	10/01/2003	Tevya A. Weinthal	WEI100US	7896

35083 7590 01/17/2007

CHARLES D. GAVRILOVICH, JR.,
GAVRILOVICH, DODD & LINDSEY, LLP
985 PASEO LA CRESTA, SUITE B
CHULA VISTA, CA 91910-6729

EXAMINER	
ROSARIO, DENNIS	
ART UNIT	**PAPER NUMBER**
2624	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/676,756	WEINTHAL, TEVYA A.	
	Examiner	Art Unit	
	Dennis Rosario	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 January 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,32,33,34,41,42 and 43 are rejected under 35 U.S.C. 102(e) as being anticipated by McPhee et al. (US Patent Application Publication No.: US 2003/0216943 A1).

Regarding claim 1, Mcphee et al. or McPhee discloses a method of managing fitness data, the method comprising:

a) converting (via fig. 3, num. 15 via "Scantron form" in paragraph [0057], line 3) hand-marked fitness data (fig. 3,num. 24) to electronic fitness data (upon the output of fig. 3,num. 15); and

b) displaying (via fig. 3, num. 19) fitness information based on the electronic fitness data.

Regarding claim 32, McPhee discloses a server for managing fitness data, the server (fig. 1,num. 18) configured to:

a) generate fitness information (via fig. 1,num. 13) from electronic fitness information (represented in fig. 1,num. 11) derived from a digital image of a data record (obtained from OCR as mentioned in paragraph [0059]) comprising hand-marked fitness data (corresponding to a "name" in paragraph [0058], line 2).

Regarding claim 33, McPhee di A server in accordance with claim 32, the server further configured to:

a) transmit (via fig. 1,num. 13) a fitness information message based on the fitness information through a communication network (fig. 1,num. 22).

Regarding claim 34, McPhee discloses a server in accordance with claim 33, wherein the fitness information message is a hypertext markup language (HTML) message (obvious to one of ordinary skill in the art of the Internet as disclosed in fig. 1,num. 22.).

Regarding claim 41, McPhee discloses a server in accordance with claim 33, wherein the fitness information comprises:

a) graphical information (or "graphical...form" in paragraph [0104], 2nd to last line) conveying a relationship (or comparison as mentioned in paragraph [0101]) between two ("physical education Program A" and "physical education Program B" in paragraph [0101]) or more fitness data values.

Claims 42 and 43 are rejected the same as claim 41. Thus, argument similar to that presented above for claim 41 is equally applicable to claims 42 and 43.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 2-6,13-22 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over McPhee et al. (US Patent Application Publication No.: US 2003/0216943 A1) in view of Tan (US Patent 5,081,690 A1).

Regarding claim 2, Mcphee teaches a method in accordance with claim 1, wherein the converting comprises:

a) scanning a fitness data record including the hand-marked fitness data (via said Scantron) to produce a digital image; and

b) processing (via "optical character recognition") the image to recognize characters of the hand-marked fitness data to produce the electronic fitness data.

McPhee does not teach the limitation of produce a digital image, but does teach using a Scantron and optical character recognition. Thus, McPhee suggests to one of ordinary skill in the art that a plurality of methods exists for inputting data into the system of McPhee.

Tan teaches a method of optical character recognition, see title, as suggested by McPhee and the remaining limitation of:

a) produce a digital image (or "digital image generated by the scanner" in col. 4, lines 32,33).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify Mcphee's teaching of optical character recognition with Tan's teaching of optical character recognition with said scanner, because Tan's teaching performs a "correction of...failed attempts to read the... character are always performed..." in col. 2, lines 32-34.

Regarding claim 3, McPhee of the combination teaches a method in accordance with claim 2, further comprising:

a) transmitting the electronic fitness data through a communication network (fig. 1,num. 22) to a user terminal (as indicated in fig. 4,num. 50), wherein the displaying is through the user terminal (as indicated in fig. 4,num. 57).

Regarding claim 4, Mcphee of the combination teaches a method in accordance with claim 3, wherein the processing comprises:

analyzing the hand-marked fitness data with an intelligent character recognition (ICR) process (or "optical character recognition" in paragraph [0057], line 4).

Claims 5 and 6 are rejected the same as claim 4. Thus, argument similar to that presented above for claim 4 is equally applicable to claims 5 and 6.

Claim 13 is rejected the same as claims 1-3. Thus, argument similar to that presented above for claims 1-3 of a 1st method is equally applicable to claim 13 of a 2nd method.

Claims 14-16 are rejected the same as claims 4-6. Thus, argument similar to that presented above for claims 4-6 of said 1st method is equally applicable to claim 14-16, respectively, of said 2nd method.

Regarding claim 17, McPhee teaches a system for managing fitness data, the system comprising:

a) a scanning device for scanning a data record comprising hand-marked fitness data;

b) a data processor for converting the hand-marked fitness data into electronic fitness data; and

c) a user terminal (fig. 1,num. 6) for displaying fitness information based on the electronic fitness data.

McPhee does not teach limitations a) and b) but teaches the invention can be practiced with "other input devices" in paragraph [0059], line 3.

Tan teaches an input device that can be used in McPhee's invention and the remaining limitations a) and b):

a) a scanning device (fig. 2,num. 200) for scanning a data record comprising hand-marked fitness data;

b) a data processor (fig. 2,num. 204) for converting the hand-marked fitness data into electronic fitness data.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify McPhee's teaching of other input devices with Tan's input devices of fig. 2,num. 200 and 204 for the same reasons as claim 2.

Regarding claim 18, McPhee of the combination teaches a system in accordance with claim 17, further comprising:

a) a server (fig. 1num. 18) for generating the fitness information based on the hand-marked fitness data.

Claim 19 is rejected the same as claim 3. Thus, argument similar to that presented above for claim 3 of a method is equally applicable to claim 19 of a system.

Regarding claim 20, McPhee of the combination teaches a system in accordance with claim 19, wherein fitness information message is formatted in accordance with hypertext markup language techniques (obvious to one of ordinary skill in the art of the Internet) and the communication network includes an Internet (fig. 1,num. 22).

Regarding claim 21, McPhee of the combination teaches a system in accordance with claim 19, wherein the data processor comprises:

a) an automated data collection engine (fig. 4,num. 56) for generating the electronic fitness data based on a recognition of hand-marked fitness data values of the hand-marked fitness data.

Regarding claim 22, McPhee of the combination teaches a system in accordance with claim 21, further comprising:

a) a data verification engine (fig. 4,num. 51) for verifying an accuracy of the electronic fitness data.

Regarding claim 29, McPhee of the combination teaches a system in accordance with claim 21, wherein the fitness information comprises:

a) graphical information (or "graphical...form" in paragraph [0104], 2nd to last line) conveying a relationship (or comparison as mentioned in paragraph [0101]) between two ("physical education Program A" and "physical education Program B" in paragraph [0101]) or more fitness data values.

Claims 30 and 31 are rejected the same as claim 29. Thus, argument similar to that presented above for claim 29 is equally applicable to claims 30 and 31.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over McPhee et al. (US Patent Application Publication No.: US 2003/0216943 A1) in view of Tan (US Patent 5,081,690 A1) as applied to claim 2 above, and further in view of Reintjes et al. (US Patent 6,912,308 B2).

Regarding claim 7, McPhee of the combination teaches a method in accordance with claim 3, wherein the hand-marked fitness data comprises:

a) characters (or "demographic information" in paragraph [0058], line 1) expressing characteristics of a physical activity ("physic-cal handicap" in paragraph [0058], lines 3,4).

McPhee of the combination does not teach the claimed handwritten characters, but teaches that "optical character recognition (OCR), or other input devices" in paragraph [0059], lines 2,3 can be used.

Reintjes et al. teaches an input device as shown in fig. 1,num. 8 as suggested by McPhee of the combination and the remaining limitation of:

a) handwritten characters (via fig. 1,num. 8).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the combination of McPhee and Tan using McPhee's teaching of an input device with Reintjes et al.'s teaching of fig. 1,num. 8, because Reintjes et al.'s teaching "allows data entered by the user to be captured without requiring any additional effort from the user" in col. 2, lines 44-46.

6. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McPhee et al. (US Patent Application Publication No.: US 2003/0216943 A1) in view of Tan (US Patent 5,081,690 A1) as applied to claim 2 above, and further in view of Reintjes et al. (US Patent 6,912,308 B2) as applied to claim 7 above, and further in view of Sanders et al. (US Patent Application Publication No.: US 2005/0121504 A1).

Regarding claim 8, McPhee of the combination of McPhee et al. in view of Tan and further in view of Reintjes et al. teaches a method in accordance with claim 7, wherein characters (or "Physical data" in paragraph [0060] express a number of repetitions of a physical activity (or "more than one flexibility test" in paragraph [0083], lines 1,2 is interpreted as the claimed repetitions.

McPhee of the combination does not teach the remaining limitation of handwritten characters, but does teach that the said flexibility test corresponding to the claimed repetitions or "physical data is collected...using a...physical fitness evaluation system or method..." in paragraph [0060], last sentence. Thus, McPhee suggests to one of ordinary skill in the art that a plurality of systems and methods exist that can collect physical data that can be inputted into McPhee's invention of said combination.

Sanders et al. teaches a system that collects physical data as shown in fig. 35, label: "Weight Program Barcode-#201" that can be used with McPhee's invention of said combination and teaches the claimed hand written characters as indicated in fig. 4 that has a column for entering the number of "Reps" as shown in the middle of fig. 4 that also includes a box on the bottom of the figure that states: USER CAN CHANGE DATA IN THESE COLUMNS AND IT WILL BE SAVED IN THE DATABASE. Thus a user can change data using a keypad with characters and numbers. Note that the claimed handwritten is broadly interpreted as writing or authoring regardless of any specific hand writing device.

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify said combination using McPhee's teaching of collecting physical data with Sanders et al.'s teaching of a bar code, because Sanders et al.'s teaching is "directed to a method for recording...custom...fitness information on a graphical user interface device equipped with a bar-code reader to expedite the user's entry of custom and general information" in paragraph [0010], 1st sentence.

Claims 9-12 are rejected the same as claim 8. Thus, argument similar to that presented above for claim 8 is equally applicable to claims 9-12.

7. Claims 23-28 is rejected under 35 U.S.C. 103(a) as being unpatentable over McPhee et al. (US Patent Application Publication No.: US 2003/0216943 A1) in view of Tan (US Patent 5,081,690 A1) as applied to claim 21 above, and further in view of Sanders et al. (US Patent Application Publication No.: US 2005/0121504 A1).

Claim 23 is rejected the same as claim 8. Thus, argument similar to that presented above for claim 8 of a method is equally applicable to claim 23 of a system.

Claims 24-28 are rejected the same as claims 8-12. Thus, argument similar to that presented above for claims 8-12 of a method is equally applicable to claims 24-28 of a system.

8. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over McPhee et al. (US Patent Application Publication No.: US 2003/0216943 A1) in view of Reintjes et al. (US Patent 6,912,308 B2).

Claim 35 is rejected the same as claim 7. Thus, argument similar to that presented above for claim 7 of a method is equally applicable to claim 35 of a server.

9. Claims 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over McPhee et al. (US Patent Application Publication No.: US 2003/0216943 A1) in view of Reintjes et al. (US Patent 6,912,308 B2) as applied to claim 35 above, and further in view of Sanders et al. (US Patent Application Publication No.: US 2005/0121504 A1).

Claims 36-40 are rejected the same as claims 8-12. Thus, argument similar to that presented above for claims 8-12 of a method is equally applicable to claims 36-40 of a server.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Rosario whose telephone number is (571) 272-7397. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DR
Dennis Rosario
Unit 2624

MATTHEW C. BELLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600